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October 2011 Franchise Tax Board Public Litigation Roster

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: <http://www.ftb.ca.gov/law/litrstr/index.shtml>.

The Litigation Rosters for the last four years may be found on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – October 2011

Case Name

Court Number

Kenneth Banks
(Judgment entered in FTB's Favor)

San Francisco County Superior Court Case No.
CGC-09-4844981

ELS Educational Services, Inc.,
(Court of Appeal ruled in FTB's Favor)

Sacramento County Superior Court Case No.
07A03070; Court of Appeal, 3rd Appellate
District Case No. C063450

Personal Selling Power, Inc
(Closing Agreement)

Alameda County Superior Court Case No.
RG09462520

FRANCHISE AND INCOME TAX
New Cases –October 2011

Case Name

Court Number

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

October 2011

APPLE, INC. v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC08471129	
Court of Appeal, 1 st Appellate District Case No. A128091	Filed – 01/16/08
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Jeffrey M. Vesely	Kristian Whitten
Pillsbury, Winthrop, Shaw, Pittman, LLP	

Issues: 1. Whether the Franchise Tax Board properly determined the order in which dividends are paid from earnings and profits.
2. Whether the Franchise Tax Board improperly allocated and disallowed interest.

Year: 09/30/89 Amount
\$231,038.00 Tax

Status: Motion to Dismiss Plaintiff's Appeal filed by FTB on April 28, 2010. Proposed briefing schedule filed by joint proposal on May 6, 2010, and accepted by the Court on May 11, 2010. Apple, Inc.'s opposition to Motion to Dismiss Appeal filed May 13, 2010. Record on appeal and notice of record was filed on May 18, 2010. Court of Appeal denied FTB's motion to dismiss appeal on May 26, 2010, and will consider issue as part of the merits of the case. On June 6, 2010, the Court deferred ruling on Apple Inc.'s request for judicial notice filed on May 13, 2010; the Court will decide this matter when it rules on the merits of the case. Plaintiff/Appellant, Apple Inc., filed its opening brief on August 6, 2010. A Motion to Consolidate Appeals A128091 and A129090 for purposes of Oral Argument was filed on August 18, 2010, and granted on August 24, 2010. Respondent's Opening Brief was filed October 5, 2010. Apple timely filed its Reply Brief. FTB filed its Reply Brief as Cross-Appellant on February 1, 2011. The Case is now fully briefed. The Request for Oral Argument was filed on March 21, 2011 by FTB. The Record to Court for Review was sent on April 13, 2011. On August 23, 2011, the Case was argued and submitted. On September 12, 2011, the Court of Appeal issued a published Opinion affirming the Trial Court Judgment. On September 26, 2011, Apple filed a Petition for Rehearing. On October 5, 2011, an Order Denying Petition for Rehearing was filed. Apple filed a Petition for Review on October 21, 2011. FTB's Answer is due on or before November 11, 2011.

BAKERSFIELD MALL, LLC v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC07462728	
<u>Taxpayer's Counsel</u>	Filed – 04/25/07
Amy L. Silverstein, Edwin Antolin	<u>FTB's Counsel</u>
Silverstein & Pomerantz, LLP	Marguerite Stricklin

Issues: 1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.

2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.
3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 2004

Amount: \$56,537.00 Tax

Status: Complex Litigation (TELEPHONIC) Case Management Conference, previously set for July 20, 2010, was continued to August 16, 2010. On August 16, 2010, the Complex Litigation Matter was removed from the calendar and continued to December 6, 2010. On December 1, 2010, a Joint Case Conference Statement was filed by Plaintiff. On December 6, 2010, a Complex Litigation Case Management Conference was held and continued to January 25, 2011. The January 25, 2011, Case Management Conference was continued to July 14, 2011. On June 16, 2011, a Notice of Continued Case Management Conference was filed by FTB. On July 14, 2011, the Case Management Conference was held and continued to October 3, 2011. On October 3, 2011, the Case Management Conference was held and the matter was continued to November 2, 2011.

BUNZL DISTRIBUTION v. Franchise Tax Board
San Francisco Superior Court Case No.CGC10506344
Taxpayer's Counsel
William F. Colgin
Kimberley M. Reeder
William Clayton
Morgan, Lewis, & Bockius, LLP

Filed - 12/17/10
FTB's Counsel
Kris Whitten
Karen Yiu

Issue:

1. Whether FTB properly included the California factors attributable to certain single-member LLCs when calculating the taxpayer's apportionment percentages.
2. Whether FTB properly included the single-member LLC's in the taxpayer's combined report.
3. Whether the FTB Settlement Bureau conducts itself with reckless disregard for Board published procedures?
4. Whether the policies and/or procedures of the FTB Settlement Bureau constitute improper underground regulations.

Year: 2005

Amount

\$1,368,734.00 Tax

\$128,562.00 Interest

Status: Summons and Complaint served on FTB December 21, 2010. FTB's Demurrer to the Complaint was heard on March 1, 2011. The Demurrer was sustained in part and overruled in part. The Answer was filed May 11, 2011. On May 26, 2011, a Case Management Statement was filed by FTB. On May 27, 2011, a Case Management Statement was filed by Plaintiff. On June 10, 2011, an Order Continuing Case Management Conference was filed resetting the conference for August 12, 2011. On June 14, 2011, the Answer to Cross Complaint was filed by the Cross-Defendant, Bunzl. On July 8, 2011, a Joint Notice of Agreement to Accept Service Electronically was filed by Bunzl. FTB filed a Case Management Statement on July 18, 2011. Bunzl Distribution filed a Case Management Statement on July 18, 2011. On July 28, 2011, the August 12, 2011, Case Management Conference was cancelled. On July 18, 2011, the trial was set for June 18, 2012. The Mandatory Settlement Conference is set for June 1, 2012.

CA-CENTERSIDE II, LLC v. Franchise Tax Board
Fresno Superior Court Case No. 10CECG00434
Taxpayer's Counsel
Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz, LLP

Filed: 02/04/10

FTB's Counsel
Amy Winn

- Issues:
1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
 2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26, of the California Constitution.
 3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 2005

Amount
\$65,201.00 Tax

Status: Defendant's Demurrer and Memorandum of Points and Authorities in Support of Demurrer was filed on April 23, 2010. The hearing on Demurrer was held and the matter taken under submission on August 12, 2010. The Case Management Conference was originally set for August 23, 2010. On August 18, 2010 a Minute Order was issued by Judge Franson, overruling the Demurrer with 45 days to answer, and scheduling Status Conference for October 13, 2010. On October 13, 2010, FTB and CA-Centerside stipulated that FTB shall have fifteen court days to file and serve its answer to the First Amended Complaint from the Decision of the Court of Appeal on FTB's Petition for Writ of Mandate. Petition for Writ of Mandate was denied October 10, 2010. Request for Judicial Notice was denied October 20, 2010. FTB filed its Answer to the First Amended Complaint on November 8, 2010. On July 22, 2011, Plaintiff's First Set of Special Interrogatories to Defendant FTB were submitted. On July 22, 2011, Plaintiff's First Set of Form Interrogatories were served. On July 22, 2011, Plaintiff's First Set of Demands for Production, Inspection, and Copying of Documents was served. On July 22, 2011, Plaintiff's first Set of Requests for Admission to Defendant FTB were served. On July 22, 2011, Declaration of Johanna Roberts in Support of Additional Discovery was served. On October 3, 2011, the FTB responded to Responses to Plaintiff's First Set of Requests for Admission. On October 3, 2011, the FTB responded to Plaintiff's First Set of Form Interrogatories. On October 3, 2011, FTB responded to Plaintiff's First Set of Demands for Production, Inspection and Copying of Documents. On October 3, 2011, FTB responded to Plaintiff's First Set of Special Interrogatories.

STEPHEN & VICKORY CHERNER v. Franchise Tax Board
Los Angeles Superior Court Case No. BC469768
Taxpayer's Counsel
Laura G. Brys
Burris, Schoenberg & Walden, LLP

Filed: 09/16/11

FTB's Counsel
Craig Scott

- Issues:
1. Whether the Franchise Tax Board properly denied/withheld Plaintiff's Claim for Refund?
 2. Whether the Franchise Tax Board properly handled and diligently processed taxpayers 2005 Amnesty Penalty Application?

Years: 1990, 2005

Amount \$87,897.00

\$

Status: Summons & Complaint filed September 16, 2011.

CUTLER, FRANK v. Franchise Tax Board		
Los Angeles Superior Court Case No. BC421864	Filed - 09/15/09	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>	
Marty Dakessian	Christine Zarifarian	
Reed Smith LLP		

Issues:

1. Whether California's Qualified Small Business Stock Deferral of Tax Provisions violate the Commerce Clause and Due Process Requirements of the United States Constitution.
2. Whether Plaintiff is entitled to a refund of taxes and interest paid to FTB.
3. Whether the Amnesty Penalty violates the Due Process Clause of the United States and California Constitutions.
4. Whether Plaintiff is entitled to attorneys' fees and costs under RTC 19717 and/or CCP 1021.5.

Year: 1998 Amount: \$200,182.00 Tax
\$47,600.00 Penalty

Status: On June 8, 2010, Defendant/FTB filed a Notice of Entry of Order Approving Stipulation extending the time for parties to file and serve cross-motions for Summary Judgment. Hearing on the cross motions for Summary Judgment occurred on September 8, 2010. On May 2, 2011, an Order was issued granting FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication. On May 3, 2011, the Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment was filed. On May 3, 2011, the Notice of Entry of Order on FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication was filed. On May 5, 2011, Plaintiff's Notice of Ex-Parte Application and Application Requesting Order Clarifying Orders on Cross Motions for Summary Judgment was filed. On May 18, 2011 a Judgment, Minute Order, and Request for Dismissal were filed. The Order denied the Plaintiff's Motion for Summary Adjudication, granted Defendant's Motion for Summary Judgment, and granted Plaintiff's Request for Dismissal of the Fourth Cause of Action. On June 14, 2011, a Notice of Appeal combined with Election to Proceed was filed by the Plaintiff. On June 30, 2011, a Notice to Reporters to Prepare the Transcript on Appeal was filed. Plaintiff has requested an Extension of Time to File their Opening Brief until November 21, 2011.

DANIEL V INC. v. Franchise Tax Board		
Los Angeles Superior Court Case No. BC457301	Filed - 03/14/11	
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Marty Dakessian	Anthony Sgherzi	Eric Brown
Reed Smith LLP		

Issues:

1. Whether Appellant has demonstrated the amnesty-related penalties assessed for the 1997 and 1998 tax years should be abated?

2. Whether Appellant has demonstrated a late filing penalty assessed for the 1997 tax year should be abated.
3. Whether Daniel V has demonstrated where it's commercial domicile was located.

<u>Years:</u> 1997	<u>Amount:</u> Tax: \$40,759.23 Interest: \$56,388.57 Late Filing Penalty \$10,189.80 Amnesty Penalty \$16,076.42 Total: \$123,414.02
1998	Tax: \$840,010.32 Interest: \$1,073,439.12 Late Filing Penalty \$0.00 Amnesty Penalty \$237,050.56 Total: \$2,150,500.00

Status: Summons and Complaint served March 14, 2011. Answer to the Complaint filed April 12, 2011. On May 3, 2011, FTB sent the First Set of Special Interrogatories to Daniel V. FTB also sent a Demand for Production of Documents . On June 21, 2011, Daniel V's Response to Defendant's First Set of Interrogatories was sent. On July 12, 2011, Plaintiff Responded to the Request for Production of Documents. Trial is scheduled for July 16, 2012. The Final Status Conference is on July 6, 2012. The Parties are to participate in a non-binding Mediation during January 2012. A Post-Mediation Status Conference is scheduled for February 6, 2012.

DICON FIBEROPTICS, INC. v. Franchise Tax Board		Filed - 03/13/07
Los Angeles Superior Court Case No. BC367885		
Court of Appeal, 2 nd Appellate District Case No. B202997		
California Supreme Court Case No. S173860		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Thomas R. Freeman, Paul S. Chan, Marty Dakessian		W. Dean Freeman
Bird, Marella, Boxer, Wolpert, Reed Smith LLP		
Nessim, Drooks & Lincenberg, P.C.		

Issues: 1. Whether Franchise Tax Board properly denied EZ Credits claimed by Plaintiff.
2. Whether Franchise Tax Board has authority to look behind vouchers issued by Local Enterprise Zone coordinator.

Year: Ending 03/31/07 Amount: \$1,104,992.00 Tax

Status: Defendant/Respondent's Reply Brief was filed on May 7, 2010. Amicus Curiae Brief filed on June 10, 2010, by California Taxpayers' Association in support of Appellant. The Response to the Amicus Curiae Brief was filed June 29, 2010. On July 26, 2010, a Reply Brief on the Merits was filed. On July 26, 2010, an Answer to the Amicus Brief was filed. The parties are waiting for the Supreme Court to schedule Oral Arguments on the matter.

DENNIS A. DODENHOFF v. Franchise Tax Board
Yolo County Superior Court Case No. PT11-993

Filed – 05/02/11

Taxpayer's Counsel

Dennis A. Dodenhoff, In Pro Per

FTB's Counsel

Robert Asperger

Issues: 1. Whether Plaintiff can recover Pecuniary Property taken by force under color of the law.
2. Whether Plaintiff can Petition for Exemplary Damages and an Injunction to prevent Agency action not authorized by law.

Years: 1992, 1993, 1999, 2000-2008

Amount: \$99,273.45

Status: Summons and Complaint were personally served on FTB on May 9, 2011. The Plaintiff filed suit in Yolo County Superior Court. This suit follows Small Claims Case No. CV CL 10-526 filed in Yolo County on December 28, 2010, which was decided against Plaintiff. On March 16, 2011, FTB petitioned the Court for dismissal via written correspondence. A Notice of Judgment was entered on April 15, 2011, stating that Dennis Dodenhoff was not owed any monies from any named defendant. The Plaintiff also filed a claim with the California Victim Compensation and Government Claims Board (VCGCB). On April 1, 2011, The VCGCB sent a letter stating that they will act on Plaintiff's Claim. On June 8, 2011, FTB's Demurrer and Motion to Strike the Yolo County Superior Court action were filed, and set for Hearing on August 25, 2011. On August 5, 2011, Plaintiff filed Plaintiff's Rebuttal to Defendant's Demurrer. On August 17, 2011, Reply Memorandum of Points and Authorities in Support of Demurrer and Motion to Strike by Defendant FTB was filed. On August 25, 2011, a Tentative Ruling Sustaining Defendant's Demurrer was filed. Plaintiff filed an Amended Complaint on August 30, 2011. On September 23, 2011, a Notice of Hearing on Demurrer together with a Memorandum of Points and Authorities in Support thereof was filed by Defendant FTB to Plaintiff's First Amended Complaint. The Hearing is scheduled for November 1, 2011.

BENJAMIN R. AND CARMELA DU v. Franchise Tax Board

Los Angeles Superior Court Case No. BC391413

Filed – 05/23/08

Court of Appeal, 2nd Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon

California Supreme Court Case No. S173860

Taxpayer's Counsel

Charles P. Rettig, Steven Toscher

Sharyn M. Fisk & Michael R. Stein

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

FTB's Counsel

W. Dean Freeman

Issues: Whether Plaintiffs are entitled to interest suspension under Revenue & Taxation Code section 19116.

Year: 1999

Amount: \$288,938.00 Interest

Status: On October 26, 2010, the Court of Appeal issued an Opinion Affirming Judgments against the Dus' and the Shimmons'. The Judgment against the Mickelsens' was reversed. The Respondent was awarded its costs incurred in the Du and Shimmon appeals. Plaintiff's filed a Petition for Rehearing filed on November 10, 2010. The Petition for Rehearing was denied on November 18, 2010. Plaintiff/Appellant timely filed a Petition for Review with the California Supreme Court. The Petition for Review was denied on February 2, 2011.

The Remittitur was issued February 9, 2011. FTB has prevailed in the Petitions filed by Du and Shimmon. The suit filed by Micklesen has been remanded to the Superior Court for further proceedings.

WILLIAM B. & LAURA K. ELCOCK v. Franchise Tax Board
Alameda Superior Court Case No. RG 11570953
Taxpayer's Counsel
William E. Taggart
Taggart & Hawkins.

Filed – 04/14/11
FTB's Counsel
Karen Yiu

Issue: Whether Plaintiff was entitled to refunds for tax years 2003-2006 for Non-Qualified Stock Options (NQSO's).

<u>Year:</u>	2003	<u>Amount:</u> \$87,209.00Tax
		\$21,802.00 Penalty
	2004	\$15,282.00Tax
		\$3,820.00 Penalty
	2005	\$28,585.00 Tax
	2006	\$89,822.00

Status: Summons and Complaint filed April 14, 2011. On May 17, 2011, the Stipulation and Proposed Order to Transfer Case was filed. On June 24, 2011, FTB's Demurrer to Plaintiff's Complaint, Notice of Hearing thereon, and Pleading in Support thereof were filed. On September 8, 2011, Case Management Conference Statement was filed. On September 16, 2011, FTB's Index of Non-California Authorities in Support of Demurrer to Complaint was filed. On September 16, 2011, FTB's Reply in Support of Demurrer to Complaint was filed. Plaintiff's Opposition to Demurrer was filed on September 17, 2011. On September 23, 2011, the Court sustained the FTB's Demurrer to the First, Second and Third Causes of Action without Leave to Amend and dismissed those three causes of action. Case is proceeding on one remaining Cause of Action. FTB filed its Answer to the Complaint on October 21, 2011. Trial is scheduled for June 15, 2012.

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board
San Francisco Superior Court Case No. CGC05439929
Court of Appeal, 1st Appellate District Case No. A120492
California Supreme Court Case No. S173180
Taxpayer's Counsel
Paul H. Frankel
Morrison & Foerster LLP

Filed – 03/29/05

Taxpayer's Counsel

Andres Vallejo,

Morrison & Foerster LLP

FTB's Counsel

Joyce Hee

Issues:

1. Whether the Plaintiffs' payroll factor was properly computed by excluding foreign employee stock options.
2. Whether the Plaintiffs' sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
3. Whether federal RAR adjustments were properly taken into account.

Years: 1992 through 1997 Amount: \$3,950,026.00 Tax

Status: Trial commenced on April 9, 2010. Closing arguments were concluded on June 2, 2010. Post-Trial briefing and exchanges regarding proposed statements of Decision occurred through September 2010. On October 6, 2010, the Court ordered the matter be deemed

under submission. On November 1, 2010, a Tentative Statement of Decision was issued in favor of FTB. On December 17, 2010, an Order to Extend Time to Enter Judgment and Require Responses to Judgment was filed. On January 10, 2011, Judgment was entered in favor of FTB. Notice of Appeal was filed on March 17, 2011. On April 12, 2011, the Exhibits and Depositions from Trial on Remand were returned to respective Counsel. On April 12, 2011, an Order granting Application, admitting as Counsel Pro Hac Vice for Appellant, was filed. On April 26, 2011, the Court of Appeal certified the record. On July 21, 2011, Appellant filed its Opening Brief in the Court of Appeal, First Appellate District. On September 14, 2011, an Application for Extension of Time to File its Opening Brief was filed by FTB. FTB's Reply Brief is due on November 15, 2011.

THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC10495911	Filed 01/11/10
Court of Appeal First District Court Case No. A130803	
<i>Taxpayer's Counsel</i>	<i>FTB's Counsel</i>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Lucy Wang
Silverstein & Pomerantz, LLP	

Issues:

1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1997 through 2004 Amount \$4,137,591.00

Status: On May 27, 2010, a Complex Litigation Case Management Conference was held; the Court ordered the matters consolidated, and the Complex Litigation Hearing, including the hearing on FTB's Demurrers was continued to October 7, 2010. This case is now consolidated with the actions filed on behalf of Jones Apparel Group, Inc. and Subsidiaries, Kimberly-Clark World Wide, Inc. & Subsidiaries; Procter & Gamble Manufacturing Co. & Affiliates; RB Holdings (USA) Inc. & Subsidiaries; and Sigma-Aldrich Corp. & Subsidiaries, all of which involve the same legal issues. On October 7, 2010, the Complex Litigation Hearing on FTB's Demurrer to Complaint was held. The Court sustained the Demurrers without leave to amend. On October 26, 2010, the Order on the Demurrer was filed. The Notice of Entry of Order was filed on November 2, 2010. On December 2, 2010, A Notice of Appeal/Request for Preparation of Transcript was filed on behalf of Gillette. The Certification of the Appeal Record was mailed on January 24, 2011. In February a Joint Stipulation Extending Time for Filing Briefs was filed allowing both Appellants and Respondent sixty additional days within which to file their respective briefs. On May 4, 2011, Appellant filed its Opening Brief. On August 9, 2011, Respondent's Brief was filed. On August 9, 2011, Respondent's Opposition to Appellants' Request for Judicial Notice was filed. On August 9, 2011, Respondent's Appendix in Support of Respondent's Brief was filed. On August 9, 2011, Respondent's Request for Judicial Notice, Motion, Memorandum and Supporting Papers Volume 1 of 2 was filed. On August 9, 2011, a Proposed Order Granting Respondent's Request for Judicial Notice was filed. Appellant's filed a Reply Brief on October 28, 2011. The matter is now fully briefed.

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board	
Alameda County Superior Court Case No. RG09441003	Filed – 03/12/09
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	David Lew
Silverstein & Pomerantz, LLP	

Issue: The issue is whether a self-reporting taxpayer participating in the Voluntary Compliance Initiative (VCI) is entitled to interest suspension under Revenue and Taxation Code section 19116.

Year: 2000 **Amount:** \$823,950.00 Interest

Status: Case Management Conference held on April 7, 2010. Hearing on Motions for Summary Judgment held on April 7, 2010. Order granting Franchise Tax Board's Motion for Summary Judgment filed April 22, 2010. Judgment was filed and entered on May 14, 2010. The Notice of Appeal and designation of the record was filed July 2, 2010. A Notice to the Attorney regarding the Notice of Appeal was filed on July 7, 2010, as was the Notice to the Court Reporter to prepare the Transcripts. The Appellant's Opening Brief was filed December 17, 2010. FTB filed its Respondent's Brief on March 17, 2011. In March a Joint Stipulation was filed allowing Appellant's sixty days to file Appellant's Reply Brief. On June 6, 2011, Appellants filed their Reply Brief. This case is now fully briefed.

GONZALES, THOMAS J. II v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC06454297	Filed – 07/18/06
Court of Appeal, 1 st Appellate District Case No. A122723 (Franchise Tax Board v. San Francisco Superior Court) (Real Party in Interest Tom Gonzales)	
California Supreme Court Case No. S176943	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Martin A. Schainbaum, Esq.	Jeffrey Rich
Martin A. Schainbaum, PLC	

Issues:

1. Whether a \$142,000,000.00 capital loss from an abusive tax shelter is allowable.
2. Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.
3. Whether the taxpayer is entitled to deduct legal expenses paid in connection with an investment.

Years: 2000 and 2001 **Amount:** \$12,374,510.00 Tax

Status: On June 6, 2011, the California Supreme Court issued a unanimous opinion holding that under the California Constitution there is no right to a jury trial in Tax Refund Lawsuits. On June 20, 2011, a Petition for Rehearing was filed by Gonzales. On June 22, 2011, the Court extended the time to consider the Petition until September 6, 2011. On July 13, 2011, the Petition for Rehearing was denied. On July 13, 2011, the Remittitur was issued. The Jury Trial decision is now final. On July 21, 2011, a Status Conference Hearing was set for July 29, 2011. On July 29, 2011, Trial was set for September 12, 2011. On August 17, 2011, Notice of Motion and Motion for Judgment on the Pleadings; Request for Judicial Notice; Points and Authorities; Declaration by Cross Complainant FTB was filed. On August

26, 2011, Six Motions in Limine and a Declaration in Support there were filed by of FTB. On September 2, 2011, the Opposition to Plaintiff's Motion in Limine was filed by FTB. On September 2, 2011, the Memorandum of Points and Authorities in Reply to Opposition to Motion for Judgment on the Pleadings was filed by FTB. On September 2, 2011, Plaintiff filed his oppositions to each of FTB's Motions In Limine together with a declarations in support thereof. On September 2, 2011, the Designation of Deposition Transcript Extractions was filed by Plaintiff. On September 6, 2011, the Status Conference was continued from September 9, 2011, to September 12, 2011. On September 6, 2011, a Motion for Judgment on the Pleadings and for Order Precluding Evidence regarding Tax Shelters was filed by FTB. Hearing on the Requests for Judicial Notice was continued from September 9, 2011, to September 12, 2011. On September 6, 2011, a Request for Judicial Notice at Trial, together with declarations in support thereof was filed by FTB. On September 6, 2011, Trial was continued from 9:00 a.m. to 1:30 p.m. On September 8, 2011, a Request for Leave to File a Supplemental Trial Brief was filed by Plaintiff. On September 8, 2011, the Objections to Plaintiff's Designation of Deposition Extractions was filed FTB. On September 8, 2011, Non-California Authorities Cited in Support of Trial Brief was filed by FTB. On September 13, 2011, Closing Arguments were held and the matter was submitted for Decision. The Court ruled in favor of FTB on the Substantive Tax Shelter issue, holding that a Federal Court Decision on the same issue was binding upon Plaintiff. The Court ruled in favor of the Plaintiff on the Penalty issue. On September 14, 2011, a Stipulation and Order to Return All Trial Exhibits & Depositions to Respective Counsel for Safe Keeping was filed. On September 22, 2011, an Order and a Fee Paid for Plaintiff's Counsel to Maintain and Preserve Documents Previously lodged with the Court was filed.

HYATT, GILBERT P. v. Franchise Tax Board Clark County Nevada District Court Case No. A382999 Nevada Supreme Court Case No. 47141 Nevada Supreme Court Case No. 53264	Filed - 01/06/98
<u><i>Taxpayer's Counsel</i></u> Thomas L. Steffen & Mark A. Hutchison Hutchison & Steffen, H. Bartow Farr III	<u><i>FTB's Counsel</i></u> James W. Bradshaw McDonald, Carano, Wilson LLP Las Vegas, Nevada

Issues: 1. Whether the judgment issued by the (Nevada) Clark County District Court in favor of Gilbert Hyatt against FTB, including the award of \$250,000,000 in punitive damages was proper.

Years: N/A Amount: Approx. \$500,000,000

Status: **Nevada Supreme Court:** On June 1, 2010, FTB submitted Appellant's reply brief and Cross-Respondent's answering brief in the Nevada Supreme Court. On June 8, 2010, FTB submitted Appellant's Supplemental Opening Brief Regarding Costs, also in the Nevada Supreme Court. Both briefs were accepted and filed. Plaintiff requested an extension until September 13, 2010, to file a responsive brief. The Order Granting In Part Motions for Extensions of time was filed July 19, 2010. On September 13, 2010, Hyatt filed and served a Supplemental Answering Brief (regarding the award of his costs). FTB filed a Supplemental Reply Brief (regarding Hyatt's costs), on October 13, 2010. Mr. Hyatt previously filed a motion requesting to file a Sur-Reply to FTB's Reply Brief. On August 24, 2010, FTB filed an Opposition to Hyatt's motion. On October 4, 2010, after reviewing the Motion and Opposition, Justice Hardesty denied Hyatt's motion and directed the clerk of

the court to return, unfiled, the proposed Sur-Reply submitted by Mr. Hyatt on August 13, 2010, and to strike the appendix to the Sur-Reply filed on August 16, 2010. On September 13, 2010, Hyatt filed a Supplemental Answering Brief Regarding Costs, including a two-volume Appendix of Exhibits. On October 12, 2010, FTB filed a Supplemental Reply Brief regarding Costs. On January 20, 2011, FTB noticed and filed Respondent's embedded Answering and Opening Cross-Appeal Brief, Reply Cross-Appeal Brief, and Supplemental Answering Brief Regarding Costs in electronic form. On February 4, 2011, Hyatt filed a Notice of Submission of Hyatt's Embedded (i) Answering Brief and Opening Cross Appeal Brief; (ii) Reply Brief on Cross Appeal; and (iii) Answering Brief on Cost Appeal which was filed with the Nevada Supreme Court. The matter is now fully briefed and the Parties await the Nevada Supreme Court's Notice of Date and Time of Oral Argument.

JONES APPAREL GROUP, INC. & SUBSIDIARIES v. Franchise Tax Board Filed 04/26/10	
San Francisco Superior Court Case No. CGC10499083	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Jill Bowers
Silverstein & Pomerantz, LLP	

Issues:

1. Whether California's Amendment of RTC 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to RTC 25128 is precluded by California's participation in the Multistate Tax Compact, violates the Constitution of the United States of America and the State of California.

Years: 12/31/01 through 12/31/03 **Amount:** \$755,730.00

Status: **Summons and Complaint served on April 27, 2010. On June 15, 2010, Complex Litigation hearing previously set for August 6, 2010, was continued until October 7, 2010. The Complex Litigation hearing was held October 7, 2010, and the Court sustained the Demurrers to the Complaint without Leave to Amend. Please see summary for the Gillette Company & Subsidiaries v. Franchise Tax Board.**

KIEWIT CORPORATION v. Franchise Tax Board	
San Diego Superior Court Case No.37-2009-00087282-CU-MC-CTL Filed - 04/09/09	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Tim Nader
Silverstein & Pomerantz, LLP	

Issues:

1. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24410 having been declared unconstitutional.
2. Whether Plaintiff properly included gross receipts from securities as part of the sales factor in calculating its tax liability to California.
3. Whether Plaintiff is entitled to a refund of taxes due to a claimed entitlement to Enterprise Zone hiring credits.
4. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24402 having been declared unconstitutional.
5. Whether Plaintiff's sale of an interest in a partnership may properly be considered non-business income.

Years: 1996 through 2001 **Amount:** \$3,779,530.00 Tax

Status: Tentative Ruling for Demurrer/Motion to Strike issued in favor of FTB on May 13, 2010. On May 14, 2010, the Case Management Conference was continued to July 16, 2010. The civil court trial was scheduled to commenced April 8, 2011. On March 24, 2011, the Trial Readiness Conference was rescheduled to October 14, 2011, and the Trial was rescheduled to November 4, 2011.

KIMBERLY-CLARK WORLD WIDE, INC. & SUBSIDIARIES v. Franchise Tax Board Filed 01/11/10
San Francisco Superior Court Case No. CGC 10495916

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts
Silverstein & Pomerantz, LLP

FTB's Counsel

Lucy Wang

Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1993 through 2004

Amount: \$14,317,394.00

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

WILLIAM E. KRUSE & TAMMY ROSS v. Franchise Tax Board
Sacramento Superior Court Case No.34-2011-00098570

Filed 03/03/11

Taxpayer's Counsel

William E. Kruse
Kruse Law Corporation

FTB's Counsel

Robert Asperger

Issues: 1. Whether Plaintiffs are entitled to their 2008 state income tax refund.

Years: 2008

Amount: \$2,231.00

Status: On March 3, 2011, the Summons and Complaint were filed. On May 26, 2011, Demurrer and Motion to Strike All or Portions of the Complaint and Supporting Memorandum of Points and Authorities in support thereof was filed by FTB. Hearing date is scheduled for October 21, 2011. On October 7, 2011, Plaintiff's Opposition to FTB's Motion to Strike All or Portions of the Complaint; Memorandum of Points and Authorities in Support Thereof was filed. On October 14, 2011, the Reply Memorandum of Points and Authorities in Support of Demurrer by EDD and FTB was filed. On October 21, 2011, a Minute Order was issued granting Defendants' Motion to Strike Portions of the Complaint.

MARTIN A. LOGIES v. Franchise Tax Board	Filed 07/01/11
Santa Clara County Superior Court Case No.111CV203752	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Bradley A. Bening	Marguerite Stricklin
Willoughby, Stuart & Bening	

Issues: 1. Whether Plaintiff is entitled to cancellation of the Preparer penalties.
2. Whether Plaintiff is entitled to a refund of the \$21,112.50 that he has paid to date.

Years: 1997-2001 **Amount:** \$21,112.50

Status: On June 23, 2011, the Summons and Complaint were filed. On August 4, 2011, the Santa Clara County Superior Court approved the Stipulation and granted the Order to Transfer the case to Alameda County. On October 13, 2011, an Entry of Order was issued to transfer the case to Oakland, Alameda County.

NEMAT & MARYAM MALEKSALEHI v. Franchise Tax Board	Filed 05/26/10
Sacramento County Superior Court Case No. 34-2009-80000365	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Barzin Barry Sabahat, Esq.	Jill Bowers
Anchor Law Firm	

Issues: 1. Whether the restitution of illegally obtained funds is deductible in the year restitution is made.
2. Whether the taxpayers are able to take deductions from gross income derived from illegal activities under California Law.

Years: 12/31/01 **Amount:** \$115,870.00

Status: Summons and Complaint served on June 1, 2010. On April 14, 2011, a Demurrer to Plaintiff's First Amended Complaint, together with Memorandum of Points and Authorities, and a Request for Judicial Notice, and a declaration in support thereof was filed by FTB. On September 27, 2011, the Sacramento County Superior Court issued a Tentative Ruling, stating its intention to sustain FTB's Demurrer without Leave to Amend. Hearing on the matter is scheduled for October 5, 2011. At The October 5, 2011, Hearing the Court ruled that FTB's Demurrer to Petitioner's First Amended Petition was sustained without leave to amend.

MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board Los Angeles Superior Court Case No. BC385197 Court of Appeal, 2 nd Appellate District Case No.B213971 (consolidated with Du et al. & Shimmon) <u>Taxpayer's Counsel</u> Charles P. Rettig, Esq. Steven Toscher, Sharyn M. Fisk Hochman, Salkin, Retigg, Toscher & Perez, P.C.	Filed – 02/08/08 <u>FTB's Counsel</u> W. Dean Freeman
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Issue: Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.

Year: 1999 Amount: \$537,178.00 Interest

Status: Please see summary for Du v Franchise Tax Board. A Preemptory Challenge was filed on March 23, 2011, pursuant to which Plaintiff disqualified Judge Mackey from presiding over this case. The Case Management Conference was scheduled for May 20, 2011. On May 20, 2011, a Minute Order was issued. The Minute Order states that the Final Status Conference is set for January 20, 2012, and the Court Trial is set for January 30, 2012. On October 11, 2011, FTB filed a Notice of Motion and Motion for Summary Judgment. On October 11, 2011, FTB filed a Memorandum of Points and Authorities in Support of Motion for Summary Judgment. On October 11, 2011, FTB filed a Separate Statement of Undisputed Material Facts in Support for Motion for Summary Judgment. The Motion for Summary Judgment is scheduled to be heard on January 27, 2012. The Trial is scheduled for January 30, 2011.

MICROSOFT CORPORATION v. Franchise Tax Board San Francisco Superior Court Case No. CGC08471260 <u>Taxpayer's Counsel</u> A. Pilar Mata, Esq, Sutherland, Asbill, & Brennan LLP	Filed – 01/22/08 <u>FTB's Counsel</u> David Lew Lucy Wang
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Issues:

1. Whether royalty income received from licensing agreements with Original Equipment Manufacturers should be sourced outside of California based upon costs of performance.
2. Whether receipts from trading marketable securities should be included in the sales factor.
3. Whether the value of trademarks, copyrights, patents and other intangible assets should be included in the property factor.
4. Whether the taxpayer should be allowed a deduction under Revenue and Taxation Code section 24402 for dividends received for the years at issue.
5. Whether the amnesty penalty under Rev. & Tax. Code § 19777.5 violates the due process clause of the U.S. Constitution, applies only retroactively, or attaches only after a liability becomes due and payable.

Years: 1995 and 1996 Amount: \$25,283,868.00 Tax

Status: Trial commenced on September 1, 2010, and further proceedings were scheduled to resume on October 14, 2010. On September 24, 2010, the Motion to Admit Counsel Pro Hac Vice was granted. On October 1, 2010, the Trial (closing arguments) was continued to

November 4, 2010. On October 5, 2010, Per Diem Fees were deposited by Microsoft. On November 4, 2010, the Court heard Closing Arguments. On January 18, 2011, the trial court issued a Proposed Statement of Decision that ruled in favor of the FTB on each of the four causes of action set forth in Microsoft's complaint for tax refund. On January 28, 2011, Microsoft filed its Objections to the Court's Proposed Statement of Decision. On February 17, 2011, the Court issued its Statement of Decision in favor of FTB. On March 15, 2011, the Court ordered that Microsoft take nothing from FTB. The Notice of Entry of Judgment was filed on March 21, 2011. On May 12, 2011, a Notice of Appeal/Request for a Transcript was filed by Plaintiff. On May 26, 2011, the Directory Notice to Prepare Transcript was filed. On June 8, 2011, the Appeal Record was Certified and mailed to the Court of Appeal. Appellant's Opening Brief was filed on September 19, 2011. On October 13, 2011, Microsoft filed a Joint Appendix.

EUGENE & PENELOPE MIDLOCK v. Franchise Tax Board Alameda County Superior Court Case No. RG10536311 <u>Taxpayer's Counsel</u> Amy L. Silverstein Edwin Antolin Johanna W. Roberts	Filed 09/14/10 <u>FTB's Counsel</u> Karen Yiu
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Issues: 1. Whether the Franchise Tax Board properly assessed an Accuracy Related Penalty in this VCI Option 2 case?

Years: 2001

Amount: \$47,637.57

Status: Summons and Complaint served personally on September 14, 2010. The Initial Case Management Conference was set for January 27, 2011. The Answer to the Complaint was filed October 29, 2010. On January 11, 2011, a Joint Case Management Statement was filed. A Tentative Case Management Order was filed on January 24, 2011. On March 25, 2011, the date of July 12, 2011, was reserved for a hearing on a Motion for Summary Judgment. On April 22, 2011, the date of August 18, 2011, was reserved for a hearing on a Motion for Summary Judgment. On April 19, 2011, An Application for a Continuance of Trial was filed by Plaintiff's. On April 22, 2011, a Hearing was held to reset the Trial to September 23, 2011. On April 22, 2011, a Hearing was held to reset the Motion for Summary Judgment for August 18, 2011. On June 2, 2011, Motion for Summary Judgment and an Index of Non-California Authorities in Support of Motion for Summary Judgment was filed. On June 3, 2011, the Motion for Summary Judgment was filed by Plaintiffs. On June 3, 2011, the Motion for Summary Judgment hearing was confirmed for August 18, 2011. On August 4, 2011, Plaintiff filed a Memorandum of Points and Authorities in Opposition to FTB's Motion for Summary Judgment. On August 4, 2011, the Declaration of Edwin P. Antolin in Opposition to FTB's Motion for Summary Judgment was filed. On August 4, 2011, Plaintiffs' Separate Statement of Disputed and Undisputed Material Facts in Opposition to Defendant FTB's Motion for Summary Judgment was filed. On August 12, 2011, Defendant FTB's Reply Brief in Support of Motion for Summary Judgment was filed. On August 12, 2011, Proposed Order Granting Defendant FTB's Motion for Summary Judgment was filed. On August 12, 2011, Defendant FTB's Objections to Plaintiff's Evidence and Request for Judicial Notice filed in Opposition to FTB's Motion for Summary Judgment was filed. On August 12, 2011, the Proposed Order Ruling on FTB's Objections to Plaintiffs' Evidence and Request for Judicial Notice filed in Opposition to FTB's Motion for Summary Judgment was filed. On August 12, 2011, Proposed Orders on Cross Motions for Summary Judgment were filed. On August 12, 2011, Plaintiff filed its

Reply to Defendant's Opposition to Motion for Summary Judgment. On August 18, 2011, the Motions for Summary Judgment Hearing was held and the matter was taken under submission. On September 9, 2011, Plaintiff's Motion for Summary Judgment was denied. On September 21, 2011, Judgment was entered in FTB's favor.

JASBIR & TAJENDER NAGRA v. Franchise Tax Board	Filed 12/14/10
San Francisco Superior Court Case No. CGC-10-506223	
<u>Taxpayer's Counsel</u>	<u>FTB'S Counsel</u>
John Youngquist	Marguerite Stricklin
Law Offices of John Youngquist	

Issues: 1. Whether FTB properly disallowed claimed gambling losses.

Years: 2006, 2007, 2008

Amount:\$40,670.00

Status: Summons and Complaint served personally on December 14, 2010. The Case Management Conference was held on May 20, 2011. On August 9, 2011, the Order to Continue Trial was filed. On August 9, 2011, the Declaration of Marguerite Stricklin in Support of Ex Parte Application to Continue Trial was filed. On August 9, 2011, the Stipulation to Continue Trial was filed. On August 19, 2011, an Ex Parte Application to Continue Trial Date pursuant to the Parties' Stipulation, and Memorandum of Points and Authorities in Support thereof, was filed. Trial held on August 22, 2011, and it was continued to November 14, 2011.

NORDSTROM, INC. v. Franchise Tax Board		
Los Angeles Superior Court Case No. BS133291		Filed - 08/16/11
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein,	Edwin Antolin	Stephen Lew
Law offices of Silverstein & Pomerantz, LLP		

- Issues:
1. Whether a Stay or Preliminary Injunction should be issued to prohibit the State from closing the VCI 2 period for Nordstrom, Inc. while the action is still pending.
 2. Whether the Court should issue a Permanent Injunction that prohibits FTB from enforcing Sections 19777, 19774, 19761, 19762 and FTB Notice 2011-01.
 3. Whether the Court should declare that Section 19777 does not apply to Nordstrom, Inc for tax years 2002-2009.
 4. Whether Sections 19777 and 19774 in combination with VCI 2 violate Due Process.
 5. Whether FTB's designating the Distribution Reorganization transaction a listed transaction under FTB Notice 2011-01 is valid.
 6. Whether the Court should declare Sections 19761 and 19762 invalid because those Sections violate Due Process by imposing unconstitutional conditions on taxpayers.
 7. Whether the Court should declare that "abusive tax avoidance transactions" for Section 19777 includes transactions listed by the IRS under IRC Section 6707(c)(1), but does not include transactions listed by FTB under Section 18407.
 8. Whether the Court should declare Section 19777 invalid because it violates Due Process and is excessively vague.
 9. Whether the Court should declare Sections 19774 and 19777 void because they violate Proposition 26.
 10. Whether FTB should declare Section 19774 invalid because it violates Due Process and denies the taxpayer review of the penalty imposed under that Section.

Year: 2002-2009

Amount
\$

Status: Summons and Complaint filed August 18, 2011. Plaintiff's Application for an Expedited Hearing or its Cause of Action for Writ of Mandate precluding FTB from implementing VCI2 was granted. Nordstrom, Inc.'s Brief was to be filed on September 6, 2011, with FTB's Opposition to be filed on September 21, 2011. Nordstrom's Reply was due on September 26, 2011, and the Matter was to be heard on October 3, 2011. On August 25, 2011, Plaintiff filed a First Amended Complaint, which resulted in the October 3, 2011, Hearing being taken off the calendar. On September 26, 2011, FTB filed its Demurrer and supporting documents to Plaintiff's First Amended Complaint. The Demurrer is to be heard on November 15, 2011. On September 27, 2011, Plaintiff filed a Motion for Preliminary Injunction seeking to extend the closing date on VCI2 as to Plaintiff until this case is resolved on its merits, that Motion is to be heard on October 21, 2011. On October 5, 2011, Case Management Conference Statement was issued. On October 6, 2011, Defendant's Memorandum of Points and Authorities and supporting pleadings in Opposition to Plaintiff's Motion for a Preliminary Injunction were filed. On October 6, 2011, a Case Management Statement was filed. On October 13, 2011, a Reply Memorandum and supporting pleadings in Support of Plaintiff's Motion for Preliminary Injunction were filed. On October 13, 2011, a Supplemental Request for Judicial Notice in Support of Plaintiff's Motion for Preliminary Injunction was filed. On October 16, 2011, Defendant's Objections to Supplemental Requests for Judicial Notice Submitted in Support of Plaintiff's Motion for a Preliminary Injunction was filed. On October 18, 2011, Plaintiff's Response to Defendant's Objections to Plaintiff's Supplemental Request for Judicial Notice Submitted in Support of Plaintiff's Motion for a Preliminary Injunction was filed. On October 21, 2011, Plaintiff's Application for Preliminary Injunction was denied. On October 25, 2011, Plaintiff filed a Petition for Writ of Mandate requesting the Second District Court of Appeal to direct the Los Angeles County Superior Court to issue the requested Injunction. On October 27, 2011, the Second District Court of Appeal denied the Petition for Writ of Mandate.

OBIORA, NOEL L. V Franchise Tax Board
San Francisco Superior Court Case No. CGC10498757
Taxpayer's Counsel
Pro Per

Filed - 05/15/10
FTB's Counsel
Karen Yiu

Issues: 1. Whether Plaintiff properly and timely filed his tax returns for tax years 2005 and 2006.
2. Whether the Franchise Tax Board properly withheld Plaintiff's claimed tax refund.

Year: 2005-2006

Amount: \$3,215.00

Status: April 16, 2010, Summons and Complaint filed. FTB filed Demurrer on September 3, 2010. On September 28, 2010, the Opposition to Demurrer to the Complaint was filed by Plaintiff. FTB filed Reply Brief in Support of Demurrer on October 1, 2010. On October 8, 2010, a Notice of Entry of Order/Notice of Ruling Sustaining Defendant's Demurrer was filed and a Notice of Entry of Order/Notice of Ruling Granting Motion to Reclassify Limited Jurisdiction to Unlimited Jurisdiction was also filed. The Answer to the First Amended Complaint was filed by FTB on October 29, 2010. Trial was set for August 29, 2011. On May 6, 2011, a Motion for Summary Judgment was filed by FTB. On May 12, 2011, a

Notice of Motion and Motion for Summary Judgment. On May 12, 2011, a Preemptory Challenge of Honorable Peter J. Busch was filed by Plaintiff. FTB's Motion for Summary Judgment was to be heard on July 25, 2011. Hearing on Plaintiff's Motion for Summary Judgment was to be on heard on July 26, 2011. On July 11, 2011, an Opposition to FTB's Motion for Summary Judgment was filed by the Plaintiff. On July 12, 2011, FTB filed its Opposition to Plaintiff's Motion for Summary Judgment. Thereafter, the Court transferred the parties' Motions for Summary Judgments to another Law and Motion department due to the Preemptory Challenge. The Court denied the Motion for Sanctions. On July 26, 2011, the Court adopted its Tentative Ruling and Granted FTB's Motion for Summary Judgment. The Notice of Entry of Order granting FTB's Motion for Summary Judgment and the Notice of Entry of Order denying Plaintiff's Motion for Summary Judgment were filed on July 26, 2011. On August 25, 2011, a Notice of Appeal and Request for Transcript was filed by Plaintiff. On September 7, 2011, a Notice of Default on Appeal was sent to Appellant. On September 8, 2011, a Request for the Transcript was filed. Case Management Conference scheduled for October 28, 2011.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board

San Francisco Superior Court Case No. CGC10495912

Filed: 1/11/10

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts

Lucy Wang

Silverstein & Pomerantz, LLP

- Issues:
1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
 2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 06/30/99 through 06/30/05

Amount: \$11,837,747.00

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC09487540

Filed - 04/20/09

Taxpayer's Counsel Taxpayer's Counsel

FTB's Counsel

Amanda J. Pedvin, Matthew D. Lerner, Esq.

Anne Michelle Burr

- Issues:
1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clause of the United States and California Constitutions.
 2. Whether the promoter penalty provided for in RTC section 19177 violates the commerce clause contained within the United States Constitution.
 3. Whether the penalty provisions provided for in RTC section 19177 apply to activities prior to calendar year 2005.
 4. Whether the proper measure of the promoter penalty is \$1,000 per transaction or 50% of the gross income derived from the improper activity.
 5. Whether the proper measure of the promoter penalty may include income not received by the Person/entity against whom the penalty has been assessed.

Years: N/A

Refund sought \$3,473,437.50 Penalty

Status: On July 22, 2010, FTB filed its Joint Case Management Conference Statement. Mandatory Settlement Conference was scheduled for October 25, 2010. The Opening Trial Briefs originally scheduled to be filed on October 27, 2010, were continued to December 7, 2010. The Reply Briefs originally scheduled to be filed on November 29, 2010, were continued to January 11, 2011. On December 2, 2010, a Joint Stipulation of Facts was filed by FTB. A Notice of Revised Trial Briefing Schedule was filed by Quellos on December 2, 2010. Trial was continued from December 7, 2010, to February 1, 2011 to March 1, 2011. On January 18, 2011, Plaintiff's filed a Reply Brief, Request for Judicial Notice, Appendix of Non-California Authorities. Also on January 18, 2011, FTB filed its Reply to Plaintiff's Opening Trial Brief, and Objection to Plaintiff's Request for Judicial Notice. The Trial that was scheduled for March 1, 2011, commenced on March 28, 2011 and was continued to April 25, 2011. On May 12, 2011, a Post-Trial Brief on Plaintiff's Facial Due Process Challenge to the statute was filed by FTB. Defendant FTB's Proposed Statement of Decision and Declaration of Service were filed June 17, 2011. The Parties have submitted proposed Statements of Decision and the Judge will review the case and issue a final Statement of Decision. The Case Management Conference which was set for October 24, 2011, was continued to November 16, 2011.

QUELLOS GROUP, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC10501299

Taxpayer's Counsel Taxpayer's Counsel

Amanda J. Pedvin Matthew D. Lerner, Esq.

Steptoe & Johnson, LLP Steptoe & Johnson, LLP

Filed - 07/20/10

FTB's Counsel

Anne Michelle Burr

Christopher Haskins

Issues: 1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clause of the United and California Constitution
2. Whether the promoter penalty provided for in RTC section 19177 violates the commerce clause contained within the United States Constitution.
3. Whether the penalty provisions provided for in RTC section 19177 apply to the activities prior to calendar year 2005.
4. Whether the proper measure of the promoter penalty is \$1,000, per transaction or 50% of the gross income derived from improper activity.
5. Whether the proper measure of the promoter penalty may include income not received by person/entity against whom the penalty has been assessed.

Years: 2001

Refund sought: \$569,807.25

Status: Summons and Complaint filed July 23, 2010. On July 30, 2010, an Application for Approval of Complex Litigation Designation was filed. On August 3, 2010, Defendant filed both an Answer to the Complaint and its Cross Complaint. On August 27, 2010, Defendant filed a Joint Case Management Conference Statement. On August 30, 2010, Quellos Group LLC filed an Answer to Cross Complaint. On October 6, 2010, a Notice of New Trial Date and New Trial Briefing Schedule was filed by FTB. (See above). The Complex Litigation Case Management Conference was continued to February 1, 2011. Although not formally consolidated, this case is proceeding in tandem with Quellos Financial Advisors, LLC v.

Franchise Tax Board. Please see summary to Quellos Financial Advisors, LLC v. Franchise Tax Board.

RB HOLDINGS (USA) INC. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496438 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10 <u>FTB's Counsel</u> Lucy Wang
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Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 2002 through 2004

Amount: \$145,240.00

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board Los Angeles Superior Court Case No. BC363822 Court of Appeal, 2 nd Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen) <u>Taxpayer's Counsel</u> Charles P. Rettig, Sharyn M. Fisk Hochman, Salkin, Rettig, Toscher & Perez, P.C.	Filed – 12/22/06 <u>FTB's Counsel</u> W. Dean Freeman
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Issue: Whether a taxpayer filing under the first option of VCI was eligible for the interest suspension provided by section 19116.

Year: 1999

Amount: \$515,422.00 Interest

Status: Please see Summary for Du v Franchise Tax Board.

SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496437 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10 <u>FTB's Counsel</u> Lucy Wang
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Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1998 through 2004

Amount: \$1,607,168

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

TAIHEYO CEMENT U.S.A., INC. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC422623
Court of Appeal, 2nd Appellate District Court Case No. B226067

Filed – 11/12/09

Taxpayer's Counsel

FTB's Counsel

Marty Dakessian

Marta Smith

Reed Smith LLP

Issues:

1. Whether plaintiff is entitled to enterprise zone sales and use tax credits for certain items it claims it “placed in service” during the tax years in question. In particular, the issue is whether the phrase “placed in service” refers to depreciable capital assets or “expensed items” usually consumed within a year of their initial use.
2. Whether the assessment of an Amnesty penalty in this case is factually warranted.
3. Whether the assessment of an Amnesty penalty in this case violates due process protections afforded the taxpayer under the constitutions of the United States of America and/or the state of California.
4. Whether FTB’s interpretation/enforcement of provisions contained within the enterprise zone credit statute constitute underground regulations.
5. Whether plaintiff is entitled to attorneys fees under the provisions of the Revenue and Taxation Code and/or the private attorney general doctrine.

Years: 1998 and 1999

Amount: \$4,980,165.00

Status: FTB’s Motion for Judgment on the Pleadings was granted on July 1, 2010. On July 23, 2010 the Notice of Appeal was filed. The Notice of Entry of Order was filed on July 26, 2010, and a second Notice of Appeal was filed on July 26, 2010. The Court sent a Notice to Reporter to prepare the Transcript for appeal purposes on August 18, 2010. On November 16, 2010, a Request for Copies was filed by FTB. Appellant's Opening Brief was filed early January 2011. Respondent's Brief filed April 6, 2011. Appellant's Reply Brief was filed June 24, 2011. This case is now fully briefed.

Irene Tritz v. John Potter
United States Federal District Court Central District
SACV10-182DOC (RNBx)
Ninth Circuit Court of Appeal
10-56967
Taxpayer's Counsel
Irene Tritz
Pro Se

Filed - 02/12/10

FTB's Counsel
Marla Markman

Issues: 1. Whether Plaintiff's post-judgment settlement of damages award against her former employer (U.S. Postal Service), which she contends she was led to believe by the Postal Service and its counsel was non-Taxable, may be set aside on any of the following bases:

- A. Fraud/Misrepresentation;
- B. Voidable Contract due to undue Influence
- C. Breach of Settlement Agreement
- D. Discrimination
- E. Retaliation
- F. Hostile Environment
- G. Interference by the Court
- H. Final Contract Violates Rights of Others
- I. Conspiracy

Years:

Amount: Not Specified

Status: First Amended Complaint filed June 4, 2010. First Amended Complaint has not yet been properly served upon FTB or Selvi Stanislaus. Notice of Appeal filed December 10, 2010. On December 15, 2010, a Time Schedule Order was filed in the United States Court of Appeals for the Ninth Circuit. On January 25, 2011, the Court sent a letter to Plaintiff/Appellant requesting money to cover the docket fees. Appellant filed an Informal Brief with the Ninth Circuit Court of Appeal on May 20, 2011. On June 22, 2011, the Notice of Appearance of Counsel or Re-Assignment of Counsel Within the Same Office was filed. On June 22, 2011, the Brief of Appellee Selvi Stanislaus, Executive Officer of the FTB, was filed. On June 29, 2011, Appellant's Informal Reply to Appellee Brief was filed. On July 14, 2011, seven copies of the Answering Brief were filed.

VENTAS FINANCE I, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. 05440001
Court of Appeal, 1st Appellate District Case No. A116277 & Case No. A117751
California Supreme Court Case No. S166870
U.S. Supreme Court Case No. 08-1022

Filed - 04/01/05

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz, LLP

FTB's Counsel

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC, registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003

Amount: \$29,580.00 Tax

Status: On August 23, 2010, the case was assigned to Judge Paul H. Alvarado, with a Case Management Conference Hearing set for September 17, 2010. On February 28, 2011, the Court ordered a Hearing on the Remaining Attorney's Fees issue be scheduled for May 18, 2011. On May 7, 2011, a Notice and Motion for Attorney's Fees and Costs and Points and Authorities was filed along with a Request for Judicial Notice by Ventas. On April 29, 2011, the FTB filed an Opposition to Plaintiff's Motion for Attorney's Fees and Costs. On May 12, 2011, a Reply Brief in Support of Plaintiff's Motion for Attorneys' Fees and Costs on Remand was filed by Ventas. On May 18, 2011, the Trial on the Motion for Attorneys' Fees and Costs was held and continued to June 20, 2011. On June 24, 2011, the Notice and Motion on Attorney's Fees and Cost on Remand was submitted for Decision. On July 18, 2011, the Order Awarding Plaintiff's Attorneys Fees and Costs on Remand was filed. No Appeal was filed by either side.